

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARVIN M. CAMPBELL,

Defendant.

No. CR 09-640 CW

ORDER GRANTING
MOTION FOR
REDUCTION IN
SENTENCE
(Docket Nos. 127,
130)

_____/

Defendant Marvin Campbell, represented by counsel, moves for a reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2) and U.S.S.G. § 1B1.10 based on the Sentencing Commission's Amendment 782 which revised the Drug Quantities Table across drug and chemical types.¹ The government opposes the motion. Having considered the parties' papers and the entire record in this case, the Court GRANTS Defendant's motion.

BACKGROUND

On April 7, 2010, Defendant plead guilty to one count of violating 21 U.S.C. §§ 841(a)(1) and (b)(1)(B)(ii), possession with intent to distribute at least 500 grams of cocaine, and one count of violating 18 U.S.C. § 924(c)(1)(A), possession of a firearm in furtherance of a drug trafficking crime. The Rule 11(c)(1)(C) plea agreement provided that the amount of cocaine and

¹ On October 1, 2015, Defendant, proceeding pro se, filed the original motion for a reduction of sentence. Docket No. 127. On December 10, 2015, the Federal Public Defender appeared on Defendant's behalf. On December 29, 2015, the Federal Public Defender filed the instant motion. Docket No. 130.

1 crack Defendant had in his possession led to an offense level of
2 28 and that Defendant was eligible for a three-level acceptance of
3 responsibility reduction for a total offense level of 25. The
4 parties further agreed that Defendant had a criminal history
5 category of IV. The parties agreed to a sentence for his drug
6 offense of no less than sixty months and no more than eighty-four
7 months of imprisonment. The sixty months represented the
8 mandatory minimum sentence for his offense, and the eighty-four
9 months represented the low end of the guideline range for an
10 offense level of 25 and a criminal history category of IV.
11 Probation recommended an eighty-four month sentence on the drug
12 count. Defendant also faced a consecutive sixty-month mandatory
13 minimum sentence for the firearm offense.

14 At the sentencing hearing on July 21, 2010, the Court found
15 that the base offense level was 26, instead of 28, due to the
16 disparity between the crack and powder cocaine guidelines.
17 Accordingly, the Court found that the total offense level was 23,
18 with a resulting guideline range of seventy to eighty-seven
19 months. The Court sentenced Defendant to seventy months on the
20 drug count to be followed by sixty months on the firearms count.

21 DISCUSSION

22 Defendant now moves for a reduction of sentence in light of
23 the Sentencing Commission's 2014 amendment to the Sentencing
24 Guidelines, Amendment 782. The amendment generally reduced by two
25 levels the base offense levels for all drug and chemical types in
26 the Drug Quantity Table in U.S.S.G. § 2D1.1. U.S.S.G. App. C,
27 amend. 782.

1 Defendant argues that, if the amendment had been in effect
2 when he was sentenced, his total offense level would have been 21,
3 resulting in a guideline range of sixty to seventy-one months to
4 be followed by the sixty-month sentence on the firearms count.²

5 I. Jurisdiction

6 The government argues that Defendant's motion is premature
7 because his appeal of this Court's denial of his § 2255 motion is
8 still pending before the Ninth Circuit. While it is true that, if
9 Defendant is ultimately successful on his § 2255 motion, this
10 motion may be moot, the issues on appeal are not the same as those
11 on appeal. "[T]he notion that a pending appeal strips the trial
12 court of jurisdiction is a judicially-crafted rule designed to
13 avoid confusion or waste of time resulting from having the same
14 issues before two courts at the same time." United States v.
15 Hickey 580 F.3d 922, 927 (9th Cir. 2009). Accordingly, the Court
16 finds that it maintains jurisdiction to consider Defendant's
17 § 3582 motion.

18 II. Sentence Reduction

19 "As a general matter, courts may not alter a term of
20 imprisonment once it has been imposed." United States v. Hicks,
21 472 F.3d 1167, 1169 (9th Cir. 2007). However, 18 U.S.C.
22 § 3582(c)(2) creates an exception to this rule.³ A defendant is

23 _____
24 ² The guideline range would actually be fifty-seven to
25 seventy-one months, but the drug offense carries a sixty-month
mandatory minimum sentence.

26 ³ Section 3582(c)(2) provides:

27 In the case of a defendant who has been sentenced to a
28 term of imprisonment based on a sentencing range that has
been subsequently lowered by the Commission . . . the

1 eligible for a sentence reduction under § 3582(c) "if two prongs
2 are satisfied: (1) the sentence is based on a sentencing range
3 that has subsequently been lowered by the Sentencing Commission
4 and (2) such a reduction is consistent with applicable policy
5 statements issued by the Sentencing Commission." United States v.
6 Pleasant, 704 F.3d 808, 810 (9th Cir. 2013) (internal quotation
7 marks omitted). The policy statement at U.S.S.G. § 1B1.10(a)(1)
8 provides that a defendant is eligible for a sentence reduction if
9 "the guideline range applicable to that defendant has subsequently
10 been lowered as a result of an amendment to the Guidelines. . . ."
11 U.S.S.G. § 1B1.10(a)(1). Accordingly, a defendant's sentence must
12 be "based on" a sentencing range that has been changed, and the
13 guideline range "applicable to" the defendant must have been
14 lowered by an amendment in order for him or her to be eligible for
15 a reduction under § 3582(c). Application Note 1(A) to U.S.S.G.
16 § 1B1.10 provides that the "applicable" guideline range is "the
17 guideline range that corresponds to the offense level and criminal
18 history category determined pursuant to § 1B1.1(a), which is
19 determined before consideration of any departure provision in the
20 Guidelines Manual or any variance." U.S.S.G. § 1B1.10 cmt.
21 n.1(A).

22 The government argues that the Court's decision to use an
23 offense level of 23 instead of 25 was a variance. Accordingly,

25 court may reduce the term of imprisonment after
26 considering the factors set forth in section 3553(a) to
27 the extent applicable if such reduction is consistent
28 with the applicable policy statement of the Sentencing
Commission.

1 the government asserts, the offense level applicable to
2 Defendant's offense was 25, not 23, and Amendment 782 lowers the
3 applicable offense level to 23. Because the Court sentenced
4 Defendant to seventy months, the low end of the range
5 corresponding to offense level 23, the government contends that
6 Defendant is not eligible for a sentence reduction. However, the
7 Court clearly indicated in its Statement of Reasons that there was
8 no departure or variance and that the Court determined that a
9 total offense level of 23 applied. Moreover, at sentencing, the
10 Court explained that it was using "a different guideline
11 calculation," not a "downward departure." Docket No. 42 at 17.
12 The government agreed that it was "fine" to call it "a different
13 guideline calculation" rather than a "downward departure." Id.

14 Accordingly, the Court finds that the applicable guideline
15 range at sentencing was seventy to eighty-seven months, based on a
16 total offense level of 23 and a criminal history category of IV.
17 Amendment 782 lowers the total offense level to 21, with a
18 resulting guideline sentencing range of sixty to seventy-one
19 months. Defendant is eligible for a sentence reduction on his
20 drug offense to sixty months.

21 Where, as here, a court determines that a defendant is
22 eligible for a sentence modification under § 1B1.10, it then
23 considers "whether the authorized reduction is warranted, either
24 in whole or in part, according to the factors set forth in [18
25 U.S.C.] § 3553(a)." Dillon v. United States, 560 U.S. 817, 826
26 (2010). The Court finds that granting a sentence reduction
27 promotes sentencing objectives. Amendment 782 adjusted the
28 guideline ranges for drug offenses so the guideline ranges

1 included, rather than exceeded, relevant statutory mandatory
2 minimum sentences. Previously, the ranges were set above the
3 mandatory minimum "to permit some downward adjustment for
4 defendants who plead guilty or otherwise cooperate with
5 authorities." 79 Fed. Reg. 26004. The Amendment was based on
6 data that showed that other statutory and guideline provisions
7 were "adequate incentive to plead guilty." Id. The Amendment was
8 also intended to address "the significant overcapacity and costs
9 of the Federal Bureau of Prisons." Id. at 26005. Research
10 indicated that the Amendment would not have any negative effect on
11 public safety or recidivism rates. Id. Considering the amended
12 Guidelines and the 28 U.S.C. § 3553(a) factors, the Court finds
13 sixty months to be a reasonable sentence for Defendant's drug
14 offense. The Court also notes that this sentence is within the
15 range agreed to in the plea agreement.

CONCLUSION

17 For the foregoing reasons, Defendant's motion for
18 reduction of sentence is GRANTED (Docket No. 130). Defendant's
19 sentence is reduced to sixty months on the drug count to be
20 followed consecutively by sixty months on the firearms count for a
21 total of 120 months. An amended judgment and commitment order
22 will be issued separately.

IT IS SO ORDERED.

Dated: May 10, 2016



CLAUDIA WILKEN
United States District Judge